

# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	01 C 7489	DATE	11/29/2001
CASE TITLE	Ronnie Scott, et al vs. Arrow Chevrolet, Inc.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

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## DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [ use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> General Rule 21 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Enter Memorandum Order. Arrow's motion to dismiss is denied. It is ordered to answer SAC Counts III and IV on or before December 10, 2001. (12-1)
(11)	<input checked="" type="checkbox"/>	[For further detail see

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	SN courtroom deputy's initials	 DOCKETING 01 NOV 29 PM 4:23	number of notices	Document Number 13
			NOV 30 2001	
			date docketed	
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			11/29/2001	
date mailed notice	SN	mailing deputy initials		

Date/time received in central Clerk's Office

**DOCKETED**  
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Plaintiffs,

Y.

No. 01 C 7489

Defendant.

Shortly after Arrow Chevrolet, Inc. ("Arrow") had filed a motion under Fed. R. Civ. P. ("Rule") 12(b) for the dismissal of Count III of the employment discrimination action filed against it by four African-American ex-employees, this Court orally denied that motion without prejudice on October 30, 2001. That denial was based on the representation by plaintiffs' counsel that the challenged claim had contained some mistaken allegations as to the timing of certain events. Because such timing was critical to the viability or nonviability of the Count III retaliation claim, plaintiffs were then granted leave to file a Second Amended Complaint ("SAC"), with Arrow then being given time to file its responsive pleading.

On November 13 the SAC was filed, and now Arrow has renewed its Rule 12(b) motion on the ground that the current Count III is still flawed. For the reasons stated in this memorandum order, Arrow's motion is denied and it is ordered to answer SAC Counts III and IV (for some reason, Arrow's contemporaneously filed Answer has addressed only Counts I and II, so that neither

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the Answer nor the motion to dismiss spoke to Count IV at all).

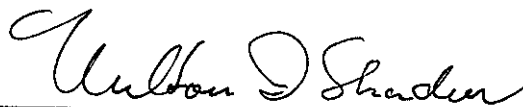
One facet of Arrow's motion can be dispatched summarily at the outset: its initial invocation of the well-recognized doctrine that when exhibits are attached to a complaint, any facts set out in the exhibits override inconsistent allegations in the complaint itself. That principle, sound enough in itself, is frankly absurd when (as here) the SAC alleges that the dates in the exhibits were mistaken. It may be said parenthetically that lawyers too often tend to be unaware that when such a frivolous argument is joined with other and more tenable contentions (let alone being placed first, as Arrow's counsel have done here), the lawyers run the risk of a loss of credibility that might adversely affect the judicial perspective in addressing counsel's more colorable legal arguments.

As for Arrow's other contentions, in all but one respect they ignore the fundamental premise that the allegations of a complaint must be accepted as gospel for purposes of any Rule 12(b)(6) motion. When that approach is taken, it must be viewed as true (1) that coplaintiffs Ronnie Scott and Derrick Johnson were prepared to assist coplaintiff Jacky Burks in his then-contemplated claim of race discrimination, (2) that Arrow knew of the Scott-Johnson-Burks relationship and (3) that it promptly proceeded to terminate both Scott and Johnson as a retaliatory measure. And when those assumed facts are supplemented by the equally fundamental proposition that plaintiffs are also entitled

to the benefit of all reasonable favorable inferences, the threshold substantive viability of the retaliation claim is assured. It may well be, of course, that Scott and Johnson may prove unable to deliver as advertised, so that the requisite level of Arrow's knowledge cannot be shown--but for the present the Count III claim must stand in those terms.

Most serious among Arrow's challenges is its contention that the current Count III claim is beyond the scope of the corresponding EEOC charges, even with the degree of leeway that the cases establish in that respect. On that score the two EEOC charges are extraordinarily cryptic--obviously the work product of agency personnel possessed of less skill than should be expected of them. But because the issue is less than certain, this Court will permit Count III to survive for the present, with the understanding that if later factual development supports application of the principles set out in such cases as Cheek v. Western & S. Life Ins. Co., 351 F.3d 497, 500 (7<sup>th</sup> Cir. 1994) (the decision invoked by Arrow), the issue may be revisited.

As stated earlier, Arrow's motion is denied. It is ordered to answer SAC Counts III and IV on or before December 10, 2001.

  
Milton I. Shadur  
Senior United States District Judge

Date: November 29, 2001